

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. : 2068 of 2018
First date of hearing: 20.03.2019
Date of decision : 20.03.2019

1. Ms. Mallika Puri
2. Mrs. Piya Puri
R/o 77-B block Z, Tatvam Villa,
Sector 48, Gurugram

... Complainants

Versus

M/s Pioneer Urban Land and Infrastructure
Ltd. (through its Director)
Address: Paras downtown centre, 5th and 7th
floor, Golf course road, sector 53, Gurugram.

... Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Pawan Kumar Roy and Advocate for the complainant.
Chetan Dhingra
Shri Ishaan Dang Advocate for the respondent.

ORDER

1. A complaint dated 05.12.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) rules, 2017 by the complainants, Ms. Mallika Puri and Mrs. Piya Puri, against the promoter, M/s Pioneer Urban Land and Infrastructure Ltd., in respect the apartment no. A-1902, 19th floor, tower A in the project Araya, sector 62,



Golf Course Extension Road, Gurugram on account of violation of the clause 11.2 of apartment buyer agreement executed on 03.06.2012 for not handing over possession of the said unit by the due date which is an obligation of the promoter/respondent under section 11(4)(a) of the Act *ibid.*.

2. Since the apartment buyer's agreement dated 03.06.2012 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively, therefore, the authority has decided to treat this complaint as an application for non-compliance of obligation on the part of the respondents/ complainant, as the case may be under section 34(f) of the Act *ibid.*

3. The particulars of the complaint are as under: -

1.	Name and location of the Project	"Araya" at sector 62, golf course extension road, Gurugram.
2.	Nature of real estate project	Group housing colony.
3.	Total area of the project	24.606 acres
4.	DTCP license no.	268 of 2007 dated 03.12.2007
5.	Date of buyer's agreement	03.06.2012
6.	Unit no.	A-1902, 19 th floor, A-tower
7.	Unit area	4690 sq. ft.
8.	Date of allotment	19.03.2012
9.	RERA Registered / not registered	101 of 2017
10.	RERA registration valid upto	31.12.2019



11.	Total consideration	Rs. 51,63,2241.87/-(as per customer ledger, pg 108 of reply)
12.	Total amount paid by the complainant till date	Rs. 4,62,23,499/- (as alleged by complainants)
13.	Payment plan	Construction linked payment plan
14.	Due date of delivery of possession clause 11.2 – developer shall apply for OC within 39 months from the date of excavation subject to government approvals and sanctions + 180 days grace period Date of start of excavation 04.06.2012	04.03.2016
15.	Intimation for possession	28.08.2018
16.	Date of occupation certificate	23.07.2018
17.	Delay in offering possession i.e. till 28.08.2018	2 years 5 months
18.	Penalty clause	Clause 11.5(i) – Rs. 10/- per sq. ft. of super area of the said unit per month

4. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. A buyer's agreement dated 03.06.2012 is available on record for the aforesaid apartment according to which the possession of the said unit was to be delivered to the complainants by 04.03.2016.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up on hearing on 20.03.2019. The reply has



been filed by the respondent and the same has been perused by the authority.

Facts of the complaint

6. The complainant submitted that Ms. Mallika Puri and Mrs. Piya Puri are law abiding citizens of India who are both residents of 77-B Block-Z, Tatvam Villa, Sector-48, Gurgaon-122001, India and had booked a unit in the project of the respondent namely, 'ARAYA' located at Village Ghata, Sector 62, Golf Course Extension Road, District, Gurgaon, Haryana.
7. The complainant submitted that the respondent is a public limited company incorporated under the Companies Act, 1956 having its registered office at Paras Down Town Centre, floor 5 & 7, Golf Course Road, Sector- 53, Gurgaon, Haryana- 122 002.
8. The complainant submitted that the respondent company had launched its project "ARAYA" situated at Village Ghata, Sector 62, Golf Course Extension Road, District, Gurgaon, Haryana. The respondent company through various representations of its project had brandished its various high-end features to lure people to make a booking with them in the said project.
9. The complainant submitted that the false representations and assurances pertaining to the timely possession and attractive



features made by the respondent were only to form a rosy picture in the minds of its prospective buyers hence, as a result of which the complainants herein also booked an apartment with the respondent. The facts leading to the present case have been given below.

10. The complainant submitted that one M/s Fairway Estates Pvt. Limited (herein after referred to as 'Company') through Mr. Praveen Aggarwal booked an apartment with the respondent company vide its application no. 92 dated 16.03.2012.

11. The complainants submitted that the respondent acknowledged the application of the company and confirmed the allocation of a residential unit vide its allotment letter dated 19.03.2012. The company was allotted a residential unit bearing no. A-1902, Tower A, admeasuring 4,690 sq. ft. super area @Rs. 9,750 per sq. ft.

12. The complainants submitted that an apartment buyers' agreement was executed between the parties on 03.06.2012.

That the details of the allotment have been provided as under:

-Booking order: 10001709

-Customer code: 13000020

-Customer name: Fairway Estates Pvt. Limited



- Unit no.: A-1902
- Unit area (sq.ft.):4,690
- BSP: Rs. 9,750
- Total Cost (after IDC, EDC and Car Park charges): Rs. 4,83,25,280/-

13. The complainant submitted that as per the agreement the respondent was to apply for occupancy certificate within 39 months from the date of excavation and after obtaining the same was to issue notice to the allottees to take the possession of the apartment within 30 days of the notice served by the respondent. The grace period further allotted to the respondent to complete the construction was 180 days.
14. The complainant submitted that the date of excavation being 02.06.2012(as per the payment receipt) the respondent was to complete the project and apply for occupancy certificate by 02.09.2015 and after obtaining the same was to notify the Allottee to take possession of the apartment. The possession was to be handed-over within 30 days of issuing such notice. Thus, the possession was to be handed-over within 40 months from the date of excavation, that is, 02.10.2015. That it is the case of the complainants that the respondent has miserably



failed to deliver the possession of the said apartment till date and there has been a delay of around 4 years in delivering the possession to the complainants.

15. The complainant submitted that the company M/s Fairway vide an agreement to sell dated 15.04.2013 sold the apartment allotted to them to the complainants. That the total consideration of the apartment was given as Rs. 4,94,97,780/- out of which the company had made a payment of Rs. 1,33,83,425/- to the respondent and the complainants were to make the residual payment of Rs. 3,52,83,325/- directly to the respondent. That as per the agreement the original documents of the allotment were handed over to the complainants as the terms and conditions would now be applicable on them.

16. The complainant submitted that the transfer of the apartment was effected by the execution of affidavits of the Company's representative namely, Sh. Parveen Kumar Aggarwal and the complainants.

17. The complainant submitted that the company further vide its letter dated 24.04.2013 intimated its intention to change the rights pertaining to purchased apartment no. A- 1902, at ARAYA, Sector -62, Golf Course Road Extension, Gurgaon



(Haryana) in favour of the complainants. It is to be noted that in the details given in the payment particulars, the date and payment for start of excavation is given as 02.06.2012 hence, the time period for possession was to be calculated from the said date as per the agreement. Thus, the possession was to be delivered by 02.10.2015 to the complainants which has not been completed till date.

18. The complainant submitted that the respondent company herein acknowledged and accepted the said transfer vide its letter dated 10.05.2013 and allotted apartment no. A-1902 in the name of the complainants herein. The booking order and the customer code being 10001979 and 10002431 respectively.

19. The complainant submitted that they have been diligently making the payment to the respondent and till date have made a payment of Rs.3,28,40,074/- along with the initial payment made to M/s Fairway Estates of Rs. 1,33,83,425/-. Hence, the total payment made by the complainants till date is Rs. 4,62,23,499/- to the respondent but have not received any possession from the respondent.



20. The complainant submitted that the respondent has unilaterally levied an interest of at an unexplainable rate of 18% on delayed payments whereas the respondent have themselves delayed the completion of the project for which they were supposed to obtain occupancy certificate way back in 2015. That the respondent company had charged the complainants of an exorbitant amount of money to the tune of Rs. 4,62,23,499/- without furnishing any details on the development and without reaching any milestone in the project.

21. The complainant submitted that the respondent vide their letter dated 28.08.2018 served on the complainants an "intimation for possession" by which the respondent again asked the complainants to pay various charges such as the maintenance charges, stamp duty etc.

22. The complainant submitted that without providing any essential information on the development on the project site and even before handing them the possession of the apartment the respondent was levying unjust charges on the complainants relating to maintenance and other charges. A detail of such charges includes:



-Maintenance payment: Rs, 3,15,450

-Stamp duty payment: Rs.30,22,000

-Registration charges: Rs. 15,510

23. The complainant submitted that the complainants have already made a considerable payment of Rs.4,62,23,499/- to the respondent and hence, could not out-rightly refuse making the payment, as the same would have jeopardized their allotment, also the wait and the money deposited all these years would have all gone straight into the drain. Thus, the complainants paid the charges for maintenance, stamp duty etc as per the demand of the respondent under protest and duress and mentioned the same in their letter dated 18.09.2018 addressed to the respondent, in respect of the unreasonable and illegal charges.

24. The complainant submitted that however, in response to the protest letter of the complainants the respondent compensated the complainants and adjusted an amount of Rs. 14,00,000/-.



25. The complainant submitted that the respondent till date has made no reply to the letter of the complainants and has not redressed their queries relating to:

- Incomplete infrastructure
- Landscaping to be done
- Incomplete facilities, like the club, which had been promised on possession
- Constant movement of labor causing serious security threats.

That the above queries/grievances of the complainants were unanswered, and they were not given any details of the possession nor were ever shown the occupation certificate.

That it must be noted that a name-sake possession was being offered by the respondent without all the facilities and features as had been promised during the booking.

26. The complainants submitted that from the acts of the respondent the complainants had sensed the dubious and malafide intentions of the respondent to delay the possession.

That the charges being levied on the complainants were unjust and arbitrary and only a way to grab their hard-earned money



surreptitiously and keeping them in dark about the actual date of delivery of the possession of the allotted apartment. That being deceived by the respondent company and being made to pay arbitrarily without giving them any details on the completion of the project, the complainants hence now seek the interference of the hon'ble authority to grant them immediate possession along with the compensation for the delay caused herein.

27. The complainant submitted that they feel duped and trapped in the unilateral agreement made for the allotment wherein they have been additionally charged @18% on delayed payments as per the whims of the respondent. It is to be further noted that the respondent company till date has failed to give any reason or compensation to the complainants for causing the said delay in handing over the possession. Thus, the complainants have sought the assistance of the hon'ble authority to help them get out of the unilateral agreement and to immediately grant them the possession due to them which should have been given way back in 2015.

28. The complainants submitted that they seek the interference of this hon'ble authority as the demands made by the



respondent are unreasonable and illegal and only a way to grab their hard-earned money. That the respondent has further made the complainants sign a unilateral agreement where no provision for compensation in case of delay in the delivery of the apartment has been given, but on the other hand the respondent has levied interest @18% on the complainants in case of delayed payment of instalments. That the above point manifests the malafide intention of the respondent to indefinitely delay the possession of the apartment with impunity and impose frivolous charges on the complainants. Moreover, the respondent is also silent on the delay caused in obtaining the occupancy certificate which was to be received by them within 39 months from the date of excavation (in 2012). That all such acts of the respondent are dubious and untrustworthy and thus, the complainants have been constrained to file the present complaint to get the possession of the apartment.



29. It is submitted that the present circumstances of the complainants have constrained them to file the present complaint as they have deposited a considerable amount of money with the respondent and no possession has been

granted to them till date. Thus, in order to seek immediate delivery of possession along with compensation the complainants have preferred the present complaint.

30. The complainant submitted that it is also important to note that the respondent have never communicated with the complainants any reason for the delay in the delivery of the possession rather, they have sought to collect over 90% of the total sale consideration till date which shows that malafide intention of the respondent.

31. It is submitted that the complainants have requested the respondent several times personally and orally for the Redressal of their grievances, but the respondent has never responded to the requests of the complainants regarding the levy of unnecessary charges and answering the queries on incomplete construction and when will be the apartment be fit to reside in.

32. It is submitted that the complainants are entitled to immediate possession along with compensation for delay. It is submitted that the complainants have been deprived from the use of the apartment for several years. It is submitted that during such time the complainants have been mentally and physically



harassed by the respondent having been made to run from pillar to post. Therefore, this hon'ble authority needs to grant immediate possession along with compensation for delay as prayed by the complainants.

33. It is submitted that the complainants cannot be expected to wait endlessly for the possession of the apartment. Hence, the complainants have preferred the present complaint for grant of immediate possession and compensation for the delay caused.

34. It is submitted that in above circumstances, it is absolutely just and necessary that this hon'ble authority be pleased to declare that the respondent was bound to deliver the possession of the apartment by October 2015.

35. It is submitted that in above circumstances, it is absolutely just and necessary that this hon'ble authority be pleased to hold that the respondent has failed to deliver the possession of the apartment as promised under the agreement.

36. It is submitted that in above circumstances, it is absolutely just and necessary that this hon'ble authority be pleased to direct the respondent to deliver immediate possession of the



apartment to the complainants along with compensation for delay.

Issues to decided

- I. Whether there has been failure on the part of the respondent in delivery of the apartment to the complainants within the stipulated time period?
- II. Whether the complainants are entitled to immediate possession of the apartment and at what rate /amount of compensation for the delay caused herein?

Reliefs sought

- I. Direct the respondent to deliver immediate possession of unit A1902 in the project Araya located at village ghata, sector 62, golf course Extension road, Gurugram along with all the promised amenities and facilities and to satisfaction of the complainant.
- II. Direct the respondent to make the payment of compensation at the prescribed rate of interest from the date of promised possession till actual date of possession.



Respondent's reply

37. The respondent submitted that present complaint is not maintainable and the provisions of RERA Act are not applicable to the project in question. The plea of compensation

by the complainant are to be decided by the adjudicating officer under section 71 of the Act read with rule 29.

38. The respondent submitted that application for issuance of OC in respect to the said unit was made on 04.04.2018 and the OC was issued on 23.07.2018. OC of tower A of Araya was received on 23.07.2018 vide memo no. ZP-338-C-VOL-I/SD(BS)/2018/21712. The project is registered under RERA Act and rules vide registration no. 101 of 2017 dated 24.08.2017.

39. The respondent submitted that complainants booked apartment bearing no. A-1902 on 19th floor of tower-A in the project Araya at Sector 62 having super area of 4690 sq. ft. along with 3 car parking spaces and buyer's agreement was executed on 03.06.2012.

40. The respondent submitted that complainants were offered possession on 28.08.2018 and were called to remit the balance payment including delay payment charges and to complete necessary formalities for handing over of the said unit to the complainants. However, the complainants did not take necessary steps to complete the necessary formalities.



41. The respondent submitted that complainants were irregular in making payments from the beginning and the allottees who complied with all the terms of buyer's agreement including timely payments are entitled to receive compensation under the agreement. In spite of the same, in good faith, the respondent credited the account of the complainants to the tune of Rs. 14,26,990/- as per the penalty in clause 11.5 of the buyer's agreement i.e. Rs. 10/- per sq. ft. per month.

42. The respondent submitted that clause 11.5(i) of the buyer agreement dated 03.06.2012 provides that compensation for delay in delivery of possession would only be given to the applicant subject to the applicant having fulfilled his part of the obligation as per the terms of allotment of the buyer agreement . Clause 11.6 of the buyer agreement dated 03.06.2012 further provides that under no circumstances shall the possession of the allotted unit be given to the allottee unless and until the allottee has made full payment of the sale consideration to the respondent and all others dues payable under the buyer agreement dated 03.06.2012 have been remitted to the respondent. Moreover , the respondent is not liable to deliver the possession of the allotted unit to the



complainants until all the obligation duly imposed under buyer agreement dated 03.06.2012 have been fulfilled by the complainants to complete satisfaction of the developer.

43. The respondent submitted that it is pertinent to note that an offer for possession marks termination of the period of delay, if any. The complainants are not entitled to contend that the period of delay continued even after receipt of offer for possession. The complainants have consciously refrained from obtaining possession of the unit in question. The complainants are therefore liable for holding charges as provided in buyer's agreement for not taking possession.

44. The respondent submitted that all the demands raised by the respondent are strictly in accordance with terms and conditions of the buyer's agreement between the parties. The complainants have assailed clauses of the buyer's agreement almost after 6 years and it is grossly barred by limitation. The Supreme Court in a ruling dated 08.05.2009 suspended all mining activities in the Aravali range in Haryana which led to scarcity of sand and other materials. The respondent was in acute shortage of labour, water and other raw materials,



permits, licenses, sanctions by different departments and these reasons were beyond the control of respondent.

45. The respondent submitted that application form contemplated a dispute resolution mechanism under clause 54 as per which any dispute inter-se the parties was to be referred to arbitration which shall be held in Gurugram. Further, as per clause 51 of the buyer's agreement, the settlement of disputes will be done by the way of arbitration only.

Determination of Issues

46. With respect to the **first and second issue**, the authority came across clause 11.2 which is reproduced hereunder

"clause 11.2 – developer shall apply for OC within 39 months from the date of excavation subject to government approvals and sanctions + 180 days grace period"

Therefore, the due date of possession comes out to be 02.03.2016 and the possession has been offered by the respondent on 28.08.2018, so there has been a delay of 2 years 5 months(appox.) in handing over of possession. The complainants cannot be entitled to refund as they have already been offered possession and it will affect the interest of other allottees who wish to continue with the project. The



complainants are however entitled to delay possession charges from the due date of possession till the offer of possession at the prescribed rate i.e. 10.75% p.a.

Findings of the authority-

47. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in ***Simmi Sikka V/s M/s Emaar MGF Land Ltd.*** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

48. The amendment of Sec. 8 of the Arbitration and conciliation act does not have the effect of nullifying the ratio of catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan***



Reddy & Anr. (2012) 2 SCC 506, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the Authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

49. Further, in **Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015**, it was held that the arbitration clause in agreements between the complainants and builders could not circumscribe jurisdiction of a consumer.
50. Keeping in view the facts and circumstances of the complaint and submissions made by the parties during arguments, the authority has decided to observe that as per clause 11.2 of the builder buyer agreement dated 03.06.2012 for unit no. A-1902, 19th floor, A-tower, admeasuring 4690 sq. feet, in project "Araya", Sector-62, Golf Course Extension Road, Gurugram, possession was to be handed over to the complainant within a period of 39 months from the date of excavation i.e. 02.06.2012 subject to government approvals and sanctions + 180 days grace period which comes out to be 2.3.2016. However, the respondent has not delivered the unit



in time. It was a construction linked payment plan. complainant has already paid Rs.4,62,23,499/- to the respondent against a total sale consideration of Rs.4,83,25,280/-. Possession has already been offered by the respondent to the complainant on 28.8.2018.

Decision and directions of the authority -

51. After taking into consideration all the material facts produced by the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions:

- i. The respondent is directed to pay delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f 02.03.2016 till 28.8.2018, as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.
- ii. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order.
- iii. Complainants are directed to take possession of the flat/unit within one month. Respondent is directed not to charge maintenance charges and holding charges from the complainant. Both the parties are directed to sort out their dispute amicably w.r.t payment.



52. The order is pronounced.
53. Case file be consigned to the registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: - 20.03.2019

(Subhash Chander Kush)

Member

Judgement uploaded on 08.04.2019



HARERA
GURUGRAM

